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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD JOSEPH CRANE,
Petitioner,
v.
M.S. EVANS, Warden,
Respondent.

No. C 07-01297 JF (PR)
ORDER DENYING PETITION
FOR A WRIT OF HABEAS
CORPUS

Petitioner, a state prisoner currently incarcerated at High Desert State Prison in Susanville, California, seeks an administrative writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the decision of the Salinas Valley State Prison (“SVSP”) that resulted in the loss of good time credits. Finding the petition stated a cognizable claim under § 2254, the Court ordered Respondent to show cause why the petition should not be granted. Respondent filed an answer, and Petitioner filed a traverse.

BACKGROUND

On March 7, 2008, while incarcerated at SVSP, Petitioner was working as a server in the D3 dining hall. Officer Wheeler informed Petitioner that Petitioner could not take food from the dining hall back to his cell, to which Petitioner had responded,

1 “Ok, boss.” (Resp’t Ex. 2 at 1.) Later that day, Officer Wheeler discovered that a
2 bucket of concentrated grape juice was missing from the walk-in refrigerator in D3
3 Dining. Id. When Officer Wheeler asked Petitioner about the missing bucket of juice,
4 Petitioner denied knowing where it was. Id. The bucket later was recovered but the
5 grape juice remained missing. Id. On March 8, 2003, Officer Wheeler found a
6 concealed bag of ice on Petitioner’s body during an unclothed body search. Id. Officer
7 Wheeler was informed that earlier that day, prison officials had recovered coffee,
8 tortillas, packages of shelled sunflower seeds, and a large bowl filled with concentrated
9 grape juice, all of which previously had been stored in the D3 dining hall, from
10 Petitioner’s cell as a result of a random cell search. Id. at 2. Petitioner then received
11 counseling for taking state food from the dining hall. Petitioner had been counseled for
12 the same reason on February 16, 2003. Petitioner received a CDC Form 115 Rules
13 Violation Report (“RVR”), charging him with stealing state food in violation of 15 Cal.
14 Code Regs. § 3012. Id. at 1.

15 A disciplinary hearing was held on April 3, 2003. Prior to the hearing, Petitioner
16 was provided with notice of the hearing and of the charges against him. (Resp’t Ex. 4 at
17 1.) Petitioner pled not guilty, but based upon the evidence presented, including
18 Petitioner’s own testimony, the RVR, and the receipt for the cell search, Petitioner was
19 found guilty and assessed a thirty day forfeiture of good time credits. Id. at 2. No
20 investigative employee was assigned to Petitioner’s case prior to the hearing, and no
21 staff assistant was assigned to Petitioner at the hearing itself. Id. at 1. Petitioner
22 requested that Officer Wheeler be present at the hearing. Id.

23 As grounds for federal habeas relief and relying upon Wolff v. McDonnell, 418
24 U.S. 539 (1974), Petitioner alleges four claims based upon an alleged violation of his
25 right to due process. Petitioner filed a state habeas petition in the state superior court
26 which was denied on May 6, 2007. Petitioner then filed a habeas petition in the state
27 appellate court which was denied on June 26, 2006. The state supreme court denied
28

1 relief on October 25, 2006. Petitioner filed the instant federal petition on March 6,
2 2007.

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4 DISCUSSION

5 A. Standard of Review

6 A district court may entertain a petition for writ of habeas corpus “in behalf of a
7 person in custody pursuant to the judgment of a State court only on the ground that he is
8 in custody in violation of the Constitution or laws or treaties of the United States.” 28
9 U.S.C. § 2254(a); Rose v. Hedges, 423U.S. 19, 21 (1975). A claim which, if
10 successful, would result in the restoration of time credits is properly brought in a habeas
11 proceeding because success on such a claim could result in the inmate’s earlier release
12 from prison.

13 B. Petitioner’s Claims

14 Petitioner claims that the following due process violations occurred at his
15 disciplinary hearing: 1) he was denied his right to present witnesses in his defense; 2) he
16 was denied his right to an investigative employee “IE”; 3) there was no evidence to
17 support the charge against him; and 4) he had no notice that his alleged conduct
18 amounted to a violation of the rules. (Pet. 8-16.) Of these four claims, claims 1 and 3
19 allege cognizable violations of the right to procedural due process under Wolff, 418
20 U.S. at 556.

21 1. Federal Due Process Claim

22 Due process requires five procedural protections in connection with prison
23 disciplinary proceedings that may result in the forfeiture of time credits. Id. First,
24 “written notice of the charges must be given to the disciplinary-action defendant in
25 order to inform him of the charges and to enable him to marshal the facts and prepare a
26 defense.” Id. at 564 . Second, “at least a brief period of time after the notice, no less
27 than 24 hours, should be allowed to the inmate to prepare for the appearance before the
28 [disciplinary committee].” Id. Third, “there must be a ‘written statement by the

factfinders as to the evidence relied on and reasons' for the disciplinary action." Id. (quoting Morrissey v. Brewer, 408 U.S. 471, 489 (1972)). Fourth, "the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." Id. at 566. Fifth, "[w]here an illiterate inmate is involved . . . or where the complexity of the issues makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or . . . to have adequate substitute aid . . . from the staff or from a[n] . . . inmate designated by the staff." Wolff, 418 U.S. at 570.

The record reveals, and Petitioner does not dispute, that Petitioner received written notice of the charges more than twenty-four hours prior to the hearing and that there was a written statement as to the findings and reasoning of the disciplinary decision. (Resp't Ex. 4.) A staff assistant was not assigned at the hearing because Petitioner speaks English and is literate, the issues were not complex, and a confidential relationship was not required. Id. With respect to witnesses, the record shows that Petitioner requested two witnesses: Officer Wheeler and another inmate. Id. Although Officer Wheeler was not able to be physically present at the hearing, he was made telephonically available through a speaker phone. Id. Petitioner had an opportunity to ask questions of Officer Wheeler, but the questions Petitioner asked were disallowed by the senior hearing officer ("SHO") as irrelevant. Id. As to his second witness, Petitioner stated that the inmate would give the following testimony: "They strip search us everyday when Officer Wheeler is here." Id. Because the SHO stipulated to the testimony, it was not necessary for the inmate to be present at the hearing. Id. Accordingly, there is no evidence to support petitioner's first claim that he was denied his right to present witnesses.

In order for an inmate to be deprived of good time credits as a result of a disciplinary hearing, the findings of the prison disciplinary board must be supported by

some evidence in the record. Superintendent v. Hill, 472 U.S. 445, 454 (1985). This standard is met if there was some evidence from which the conclusion of the administrative tribunal could be deduced. See id. at 455. An examination of the entire record is not required nor is the reviewing court required to conduct an independent assessment of the credibility of witnesses or weighing of the evidence. See id. The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. See id. The Ninth Circuit also has held that there must be some indicia of reliability of the information that forms the basis for prison disciplinary actions. See Cato v. Rushen, 824 F.2d 703, 704-05 (9th Cir. 1987). Here, the evidence of Petitioner's guilt consisted of a detailed statement by the reporting officer who had warned Petitioner about stealing state food and who later discovered the hidden bag of ice on Petitioner's body, the receipt from the random cell search listing items taken from the dining hall, and Petitioner's own admission that he "did have some juice in [his] cell but the regular Officer lets us take stuff out." (Resp't Ex. 4 at 2.) Accordingly, there was sufficiently reliable evidence to find Petitioner guilty of the charged offense. See Hill, 472 U.S. at 454.

Because the procedural protections required by Wolff were met in this case, and because the findings of the disciplinary board were supported by "some evidence," Hill, 472 U.S. at 445, there was no violation of Petitioner's federal right to due process. Accordingly, the state courts' denial of this claim was not contrary to, or an unreasonable application of, clearly established Supreme Court precedent, nor was it based on an unreasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d)(1), (2).

2. Right to Investigative Employee

Petitioner's second claim is that he was denied his right to an IE to assist him in obtaining evidence that he previously had been allowed to take items from the dining hall. Under Wolff, whether an IE should be appointed depends on whether "an illiterate inmate is involved... or whether the complexity of the issue makes it unlikely

1 that the inmate will be able to collect and present the evidence necessary for an
2 adequate comprehension of the case.” 418 U.S. at 570. As noted above, the record
3 shows that Petitioner is not illiterate, that the issues were not complex, and the available
4 information was sufficient to permit the disciplinary board to assess Petitioner’s guilt.
5 (Resp’t. Ex. 4 at 1.) Petitioner has failed to demonstrate that he was unable to collect
6 information on his own or that the information he would have obtained through an IE
7 would have been relevant to the disciplinary proceedings. Whether or not Petitioner
8 previously had been allowed to take items from the dining hall had little or no relevance
9 to whether Petitioner took food by unauthorized means on the occasion in question.

3. Notice under State Law

Petitioner’s final claim is that he had no notice that his conduct amounted to a violation of the rules as required by state law. See Cal. Code Regs. Tit. 15, § 3312(a). However, the federal Due Process Clause does not require that prisons comply with a state’s own, more generous procedures. See Walker v. Sumner, 14 F.3d 1415, 1419-20 (9th Cir. 1994). Even so, it appears from the record that prison officials did provide discretionary warnings in accordance with state law, and although Petitioner denies that he had been warned about stealing food by Officer Wheeler on March 7, 2003, (Trav. 2), he does not deny having been counseled about similar conduct in February 2003, see *supra* at 2.

CONCLUSION

22 For the foregoing reasons, the petition for a writ of habeas corpus is DENIED on
23 the merits. The clerk shall terminate any pending motions and close the file.

IT IS SO ORDERED.

25 || Dated: 1/29/09


JEREMY FOGEL
United States District Judge